

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
M.R.S. Ventures, Inc.)	File Number EB-07-OR-014
)	
Licensee of WDSK-AM)	NAL/Acct. No. 200732620004
Cleveland, MS)	
)	FRN 0005013222
Facility ID # 16554)	

FORFEITURE ORDER

Adopted: June 6, 2007

Released: June 8, 2007

By the Regional Director, South Central Region, Enforcement Bureau:

I. INTRODUCTION

1. In this *Forfeiture Order* (“*Order*”), we issue a monetary forfeiture in the amount of seven thousand dollars (\$7,000) to M.R.S. Ventures, Inc., (“M.R.S.”), licensee of radio station WDSK-AM, in Cleveland, Mississippi for repeated violation of Section 73.49 of the Commission’s Rules (“Rules”).¹ The noted violation involves M.R.S.’ failure to enclose an antenna tower with radio frequency potential at the base within an effective locked fence.

II. BACKGROUND

2. On February 7 and February 8, 2007, in response to a complaint, agents from the Commission’s New Orleans Field Office of the Enforcement Bureau (“New Orleans Office”) inspected radio station WDSK-AM in Cleveland, MS. On both days, the hasp on the gate of the fence enclosing the antenna structure, which has RF potential at the base, was broken, allowing easy access. The latch on the gate could not be secured because of the condition of the hasp. There was no perimeter fence around the property. On February 8, 2007, the station manager stated he was unaware of the condition of the fence surrounding the antenna structure.

3. On May 1, 2007, the New Orleans Office issued a *Notice of Apparent Liability for Forfeiture* to M.R.S. in the amount of seven thousand dollars (\$7,000), for the apparent repeated violation of Section 73.49 of the Rules.² M.R.S. submitted a response to the *NAL* requesting a reduction or cancellation of the proposed forfeiture.

III. DISCUSSION

4. The proposed forfeiture amounts in this case was assessed in accordance with Section

¹ 47 C.F.R. § 73.49.

² *Notice of Apparent Liability for Forfeiture*, NAL/Acct. No. 200732620004 (Enf. Bur., New Orleans Office, May 1, 2007) (“*NAL*”).

503(b) of the Communications Act of 1934, as amended,³ Section 1.80 of the Rules,⁴ and *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, 12 FCC Rcd 17087 (1997), recon. denied, 15 FCC Rcd 303 (1999) ("*Forfeiture Policy Statement*"). In examining M.R.S.' response, Section 503(b) of the Act requires that the Commission take into account the nature, circumstances, extent and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require.⁵

5. Section 73.49 of the Rules⁶ requires that antenna towers having radio frequency potential at the base must be enclosed within effective locked fences or other enclosures. However, individual tower fences need not be installed if the towers are contained within a protective property fence. On February 7 and February 8, 2007, the gate of the fence surrounding WDSK-AM's antenna structure was not secured and could be easily opened, providing ready access to the base of the structure. This antenna structure was confirmed to have radio frequency at the base. There was no perimeter fence around the property. Therefore, the antenna structure was not enclosed within an effective locked fence or protective property fence on more than one day. Based on the evidence before us, we find that on February 7 and 8, 2007, M.R.S. repeatedly violated Section 73.49 of the Rules by failing to enclose its antenna structure within an effective locked fence.

6. M.R.S.' response to the *NAL* does not dispute these facts. Instead M.R.S. raises issues related to the willfulness of the violation. M.R.S. asserts that it regularly inspects the fence and that the hasp was not damaged less than a week prior to the inspection.⁷ However, as the *NAL* concluded that M.R.S. was apparently liable for repeated violations, not willful violations, M.R.S.' response raises no issues that would warrant reduction or cancellation of the forfeiture. M.R.S. also states that it repaired the hasp within two hours of the inspection on February 8, 2007 and has increased the frequency of its fence inspections.⁸ Corrective action taken to come into compliance with the Rules is expected, however, and does not nullify or mitigate any prior forfeitures or violations.⁹

7. We have examined M.R.S.' response to the *NAL* pursuant to the statutory factors above, and in conjunction with the *Forfeiture Policy Statement*. As a result of our review, we conclude that no reduction of the proposed \$7,000 forfeiture is warranted.

IV. ORDERING CLAUSES

8. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Communications Act of 1934, as amended, and Sections 0.111, 0.311 and 1.80(f)(4) of the Commission's Rules, M.R.S. Ventures, Inc. **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of seven thousand

³ 47 U.S.C. § 503(b).

⁴ 47 C.F.R. § 1.80.

⁵ 47 U.S.C. § 503(b)(2)(E).

⁶ 47 C.F.R. § 73.49.

⁷ We note that M.R.S.' response to the *NAL* was not provided under penalty of perjury and did not include any supporting documentation. In addition, M.R.S. failed to mention contemporaneous to the inspection that it had recently inspected the fence.

⁸ M.R.S. also asserts that its antenna structure is located on a dead end road that is often closed. However, this fact has no bearing on whether its antenna structure was enclosed within an effective locked fence. In addition, on February 7 and 8, 2007, the road was open, as the agents were able to reach the antenna structure.

⁹ See *Seawest Yacht Brokers*, Forfeiture Order, 9 FCC Rcd 6099 (1994).

dollars (\$7,000) for violation of Section 73.49 of the Rules.¹⁰

9. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the Rules within 30 days of the release of this *Order*. If the forfeiture is not paid within the period specified, the case may be referred to the Department of Justice for collection pursuant to Section 504(a) of the Act.¹¹ Payment of the forfeiture must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the NAL/Acct. No. and FRN No. referenced above. Payment by check or money order may be mailed to Federal Communications Commission, P.O. Box 358340, Pittsburgh, PA 15251-8340. Payment by overnight mail may be sent to Mellon Bank /LB 358340, 500 Ross Street, Room 1540670, Pittsburgh, PA 15251. Payment by wire transfer may be made to ABA Number 043000261, receiving bank Mellon Bank, and account number 911-6106. Requests for full payment under an installment plan should be sent to: Associate Managing Director, Financial Operations, 445 12th Street, S.W., Room 1A625, Washington, D.C. 20554.¹²

10. **IT IS FURTHER ORDERED** that a copy of this *Order* shall be sent by First Class and Certified Mail Return Receipt Requested to M.R.S. Ventures, Inc. at its address of record.

FEDERAL COMMUNICATIONS COMMISSION

Dennis P. Carlton
Regional Director, South Central Region
Enforcement Bureau

¹⁰ 47 U.S.C. § 503(b); 47 C.F.R. §§ 0.111, 0.311, 1.80(f)(4), 73.49.

¹¹ 47 U.S.C. § 504(a).

¹² See 47 C.F.R. § 1.1914.